The Forty-Sixth Meeting

of the Board of Directors of

The Tobacco Institute, Inc.

March 1, 1980

Report of the Committee of Counsel

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During 1979 and this far into 1980, a major share of the attention of the Committee of Counsel has been devoted to strategic planning in our long-running disputes with the Federal Trade Commission.

In 1979, we made substantial progress towards resolving the civil penalty action based on our use of the caution notice in advertising and promotion materials. As all of you will remember, some five years ago the FTC was insisting that the enforcement action against the six major tobacco companies for alleged violations of the 1972 Consent Order could only be settled by payment of millions of dollars in penalties to finance corrective advertising and gross enlargement of the health warning to a point where it would be doubtful that the industry would find it feasible to use many types of advertising and promotional pieces. Since then, thousands of hours of lawyers' time have been devoted to acrimonious and often exasperating negotiating sessions with FTC staff members and assistant United States attorneys. As you know, almost a year ago five companies were able to reach agreement with the government on the terms of a consent judgment under which the action would be settled by payment of $100,000 by each of four companies

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and $85,000 by the fifth. The negotiated settlement requires almost no changes in the size or format of the caution notices currently used in nearly all of our advertising and point-of-sale material. The only significant change being in outdoor billboards where the warning would appear in larger letters and in a horizontal strip at the bottom of the ad. R. J. Reynolds intends to litigate the interpretation of the 1972 Consent Decree as it relates to the size of the warning on billboards as well as the question of its liability for penalties. Meanwhile, the settling companies intend to seek a delay in implementing the changes on billboards until a decision is handed down in the Reynolds case.

In the other major controversy with the FTC -- the blunderbuss subpoena for our advertising and consumer research -- after more than three years of stiff resistance, the companies, last summer, were compelled to turn over documents. One of these, as you know, was the now famous Roper Study, which in a shocking example of bureaucratic irresponsibility, the Commission staff leaked to the press. This led the Federal judge, who ordered the subpoena enforced, to impose some additional requirements on the FTC to insure the protection of the rest of the material. This action

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also incensed certain members of Congress and improved the chances for passage of legislation that would limit the subpoena powers of the FTC. It is interesting that the FTC has not yet demanded any additional material from those companies which elected to submit their documents piecemeal and there is some speculation that the Commission may not get around to making additional demands for some time.

Another FTC action which has been long delayed is the publication of carbon monoxide figures which the FTC announced it would commence several years ago. Within the past two weeks, counsel for all six of the major companies joined in a demand to the FTC for an opportunity to state their views on carbon monoxide measurement before the FTC publishes any figures.

In Congress, where both Houses have passed bills to prevent various abuses of power by the FTC, some members of the Committee of Counsel are trying to create an opportunity to argue for deletion from the statutory authority of the FTC of the power to proceed against advertising which it deems to be "unfair". You all realize the significance of this to our industry.

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In another arena, the Committee of Counselhas tried to assist the Institute in dealing with the increasing pressures on the industry to produce a so-called "self-extinguishing cigarette". This problem could affect the very essense of our products and the Committee of Counsel will give it high priority.

With the passage last year of the Federal law against cigarette bootlegging, we had hoped that the pressures on us as an industry to take some affirmative steps in this area might be eased. However, we find that we are having to deal with an increasing number of demands and, in some instances, threats from state and local taxing authorities. They are beginning to insist on voluntary cooperation from the cigarette manufacturers by, for example, affixing tax stamps at the factory and under the cellophane. (We have been threatened with criminal prosecution under the Federal anti-racketeering statutes.) Our Committee will be dealing with the increasing problems raised by these demands of the state and local taxing authorities during this year and, I fear, for many years to come.

Another aspect of taxation involves the proposed acceleration of payments of the Federal excise tax on

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cigarettes. This is a matter which the Committee of Counsel has addressed with the help of the Institute staff and particularly Marlow Cook, Dave Henderson and their associates -- as well as Bill O'Flaherty and the Tobacco Tax Council.

The Committee has counselled with Covington & Burling on a number of cases in the courts and administrative agencies where the industry is not able to participate directly. You're all familiar with the court actions by ASH against the Food and Drug Administration, which attempt to require that agency to regulate cigarettes; actions by federal employees against government agencies, which attempt to require segregated facilities for smokers; and the court challenges to the constitutionality of certain state actions -- such as the smoker segregation provisions adopted by the New Jersey Public Health Council.

The Committee of Counsel has continued to work on developing credibility for the industry in the medical area. During the past year it was found to be impossible to carry on with the Harvard Project because of administrative difficulties with the Harvard administration. Fortunately, Dr. Gary Huber, as you know, remains a sincere friend

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of the industry. We continue to hope that he can be useful to us in some other capacity. Working with the Shook, Hardy firm, our Committee has considered and approved a number of special projects which support the work of scientists who we may have occasion to call upon for various kinds of assistance.

I want to specifically mention Ernie Pepples, who chairs a committee which is charged with upgrading the industry's research effort through the CTR and perhaps with new university grants. And also Max Crohn, who is forming a sub-committee to make an appraisal of the smoking/lung cancer question to determine whether it may be possible to formulate new or different approaches to our position that the case against cigarette smoking remains unproven.

I want to thank all the members of the Committee for their dedicated service over the past year. I also want to thank Horace for his invaluable help in providing the Committee with early warnings of problems, and for his fine talent for defining the issues and guiding us toward reasonable solutions.

Respectfully submitted,

Thomas F. Ahrensfeld
Chairman

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